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IN THE
COURT OF APPEALS OF INDIANA

RAYNA R. BUSHROD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A05-0709-CR-529
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Scott R. Bowers, Judge
Cause No. 82D02-0703-FA-231

April 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Statement of the Case

Rayna R. Bushrod appeals the eighteen-year sentence she received following her conviction of Aggravated Battery, as a Class B felony.[1] We affirm.

Issue

Bushrod raises one issue, which we restate as two:

I. Whether the trial court omitted a significant mitigator clearly supported by the record and advanced for consideration; and

II. Whether the sentence is inappropriate considering the nature of the offense and the character of the offender.

Facts

March 13, 2007, Bushrod and Latorya Baker were in an argument in an Evansville bar. At some point, Bushrod dropped her purse, which contained a box cutter. She claims that when she bent down, Latorya hit her on the head.[2] Bushrod grabbed her box cutter and cut Latorya repeatedly around her arms and face. Bushrod was heard to say, "I swear to God I'm gonna kill her." Appellant's App. 13. Thereafter, Bushrod left, but she later "turn[ed] herself in" at police headquarters. Id. at 14.

Latorya was unconscious when she arrived at the hospital, where her condition was described as "critical" but "stable." Id. She had sustained multiple lacerations, including a five or six inch cut by her right shoulder; a three-inch cut on her right inner arm; two cuts to her left shoulder, one three inches and one six or seven inches long; a nine-inch cut to the back of the shoulder; a laceration toward her scapula at least eleven inches long; a cut to the

[1] Ind. Code § 35-42-2-1.5.

head and area above the eye; and a cut to the left wrist that severed a major artery and two tendons, resulting in the loss of sensation to the hand. Latorya's injuries required 186 staples.

The State charged Bushrod with attempted murder as a Class A felony,[3] and later added an aggravated battery charge. Bushrod pleaded guilty to aggravated battery in exchange for dismissal of the attempted murder charge. The plea agreement included a waiver of the right to appeal her sentence. In its sentencing statement, the trial court identified the significant injury to the victim, far exceeding what was necessary to establish the elements of the offense, and Bushrod's numerous minor criminal offenses as aggravating circumstances. The court named her employment, education and family life as mitigating circumstances. Although Bushrod expressed remorse, the court found it "utterly disingenuous," stating that her "willingness to deny, minimize and falsify is an indication of extremely poor character." Tr. 54. Finding the aggravators significantly outweighed the mitigators, the court imposed an enhanced eighteen-year executed sentence.[4] Bushrod now appeals.

Discussion and Decision

We first consider the State's argument that Bushrod has waived review of her sentence. Waiver involves the "intentional relinquishment or abandonment of a known right." Smylie v. State, 823 N.E.2d 679, 688 n.13 (Ind. 2005) (citations omitted). This Court

[2] The statement of facts is derived from the probable cause affidavit and the sentencing hearing transcript. At sentencing, Latorya denied that she hit Bushrod on the head.

[3] Ind. Code § 35-42-1-1; Ind. Code § 35-41-5-1.

has held that a defendant may waive the right to a direct appeal of the sentence in a plea agreement. Perez v. State, 866 N.E.2d 817, 820 (Ind. Ct. App. 2007), trans. denied.[5] In Perez, however, the defendant's waiver was not only reflected in the written plea agreement but the trial court also "expressly reviewed with [the defendant] that he was agreeing to waive any right to appeal the sentence to be imposed . . . ." Id. at 819. The defendant confirmed that this was his intention. Id.

Here, the preprinted plea agreement includes paragraph 12, which reads:

> The Defendant agrees that he [sic] was fully advised of and knowingly, intelligently and voluntarily waived the right to challenge the "reasonableness" of the Court's sentence under Appellate Rule 7(b), waived the right to challenge the Court's findings as to aggravating and mitigating circumstances, and waived the right to challenge the weighing of aggravating and mitigating circumstances.

Appellant's App. 28. Following paragraph 12, there is the request for a "Pre-Sentence Report" and the deputy prosecutor's signature. Id. A subsequent affirmation begins with: "I, **Rayna Bushrod**," and then enumerates the constitutional rights Bushrod acknowledges she is waiving by pleading guilty. That section, which concludes with Bushrod's signature, does not mention a waiver of the right to a direct appeal of her sentence. The written plea agreement is itself ambiguous.

We further observe that, before accepting the plea, the trial court did not specifically inquire whether Bushrod knowingly and intelligently waived the right to appeal her sentence. Further, both counsel and the trial court operated on the belief that Bushrod had the right to a

[4] Indiana Code section 35-50-2-5 provides: "A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

direct appeal of her sentence. For example, after sentencing, without objection from the State, defense counsel informed the court that she would be discussing that issue with Bushrod. Thereafter, the court advised Bushrod of her right to appeal her sentence. Indeed, when asked if she wished to appeal the sentence, Bushrod answered in the affirmative, and the court appointed counsel for that purpose. On this record, we cannot conclude that Bushrod knowingly and intentionally waived the right to appeal her sentence.

I. Abuse of Discretion

Bushrod contends that the trial court abused its discretion when it failed to identify her "role" in the argument as a mitigator. Appellant's Br. at 14. Her contention focuses on her claim that Latorya hit her first and on Latorya's physical size advantage. The trial court was required to enter a sentencing statement including "a reasonably detailed recitation of [its] reasons for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id.

We review that sentencing determination for an abuse of discretion. Id. A trial court abuses its discretion if, inter alia, it enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration[.]" Id. at 490-491. An allegation that the trial court failed to identify a mitigating factor requires the defendant to

[5] On September 27, 2007, our Supreme Court granted transfer in a case involving this issue. See Creech v. State, No. 35A02-0612-CR-1140 (Ind. Ct. App. Aug. 6, 2007), trans. granted.

demonstrate that the mitigating evidence is both significant and clearly supported by the record. Id. at 493.

Here, the record supports a finding that Latorya was taller and heavier than Bushrod. But even if the larger woman hit Bushrod on the head, that act does not explain Bushrod's repeated, vicious attacks with the box cutter. Bushrod admits that her actions "went way too far . . . even in light of the fact that [Latorya] was a much larger initiate aggressor." Appellant's Br. at 14. The trial court did not abuse its discretion by declining to identify Bushrod's role in the argument as a significant mitigating factor.

II. Inappropriate Sentence

Without specifically invoking Indiana Appellate Rule 7(b), Bushrod seeks revision of her sentence based upon her claim that it is inappropriate in light of the nature of the offense and the character of the offender. Our Supreme Court recently reviewed the standard by which appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The nature of the offense is that, again and again, Bushrod brutally cut Latorya on her upper torso and face, inflicting sizable wounds and "extremely visible" permanent disfigurement. Tr. 52. Regarding character, Bushrod left the scene as Latorya lay in her

blood. She was twenty-two years old at the time of the crime, yet her adult criminal record includes at least ten misdemeanor offenses. The list includes false informing, conversion, and check deception. Judgment was withheld on a 2006 possession of marijuana charge, but Bushrod admitted that she had used marijuana on the day of the current offense. Bushrod's conduct reveals a pervasive disregard for the law. We conclude that, based upon the nature of the offense and the character of the offender, Bushrod's eighteen-year sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.